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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th August, 2024

No. 13/1/9852-HII(2)-2024/13437.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **31/2022** dated **30.05.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PRESIDENT / GENERAL SECRETARY, CHANDIGARH GOVERNMENT TRANSPORT WORKERS UNION, REGD. NO.11, RECOG. NO.1, PLOT NO.701, INDUSTRIAL AREA, PHASE - I, DEPOT NO.1. (Workers' Union)

AND

THE DIVISIONAL MANGER, CHANDIGARH TRANSPORT UNDERTAKING -CUM-DIRECTOR TRANSPORT, U.T. CHANDIGARH. (Managements)

AWARD

1. Vide Endorsement No.13/1/9852-HII(2)-2022/4786 Dated 31.03.2022 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 27.04.2021 in respect of Shri Ashwani Kumar - Driver No.86-A, CTU (*here-in-after in referred "workman"*) raised by the President / General Secretary, Chandigarh Government Transport Workers Union (*here-in-after referred "workers'union"*) uponThe Divisional Manager, Chandigarh Transport Undertaking-cum-Director Transport, U.T. Chandigarh (*here-in-after in referred "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*here-in-after in short referred "ID Act"*) in following words :-

Signature Not Verified
Digitally Signed by:
Jatinder Kumar
On 04-08-2024
04:57:37 IST
Reason: Published
Location:

"Whether the demand raised in the demand notice dated 27.04.2021 by the President/ General Secretary, Chandigarh Government Transport Workers Union, Regd. No.11, RECOG No. 1, Plot No. 701, Industrial Area, Phase-I, Depot No. 1 AND the Managements of the Divisional Manager, Chandigarh Transport Undertaking-cum-Director Transport,

(2047)

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UT, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

2. Upon notice, the workers' union appeared through the workman. Thereafter on 03.08.2022 Shri J. R. Syal filed authority letter of the workers' union and statement of claim.

3. Briefly stated the averments of claim statement are that the case of the workman was sponsored by the workers' union in a meeting held on 10.10.2020 wherein it was unanimously resolved that injustice has been done with the workman at the hands of the management. The workman served a demand notice under Section 2(k) of the ID Act, on the management, detailing the facts, calling upon the management to regularize the services of the workman on completion of 10 years of service from his initial appointment w.e.f December, 2003 and to pay the difference of pay along with interest @ 18% per annum. The conciliation proceedings in respect of demand notice were concluded on 21.09.2021. During the course of conciliation proceedings, the management did not file the written comments, so settlement could not be arrived between the parties on the demand notice despite several rounds of conciliation proceedings and best efforts so made. The demand notice as per the intimation given by the Conciliation Officer U.T. Chandigarh vide Endorsement No.442 dated 07.02.2022 stood unsettled under Section 2(k) of the ID Act. The Conciliation Officer submitted the confidential report as stipulated under Section 12(4) of the ID Act for consideration. Thereafter, the Chandigarh Administration in the Labour Department vide order bearing No.13/1/9852-HII(2)-2022/4785 dated 31.03.2022, in exercise of powers conferred by Clause C of sub-section (1) of Section 10 of the ID Act read with Government of India, Ministry of Labour's notification No.S-11025/9/96-IR(PL) dated 24.02.1997 referred the matter to the Industrial Tribunal & Labour Court, U.T. Chandigarh for adjudication :-

"Whether the demand raised in the demand notice dated 27.04.2021 by the President/ General Secretary, Chandigarh Government Transport Workers Union, Regd. No.11, RECOG No. 1, Plot No. 701, Industrial Area, Phase-I, Depot No. 1 AND the Managements of the Divisional Manager, Chandigarh Transport Undertaking-cum-Director Transport, UT, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union/ Workers are entitled to, if any ?"

In consequence thereto, the applicant (*here-in-after 'workman'*) has filed the present claim application stating therein that in the year 2003, management of CTU was in dire need of Drivers due to shortage of staff and most of the posts were lying vacant. For appointment of Driver, the management sent a requisition to the employment Exchange and also gave advertisement in the Punjabi Tribune. The name of the workman was duly sponsored by the Employment Exchange for appointment as Driver in the CTU. The workman was fulfilling the requisite qualification for appointment as Driver and was duly selected and recommended for appointment as Driver by the Selection Committee. The workman was appointed as Driver against the vacant post on 28.04.2004 and was imparted training and his contract was also extended from time to time. The workman was performing his duties with diligence and devotion throughout from the date of his appointment till his illegal termination on 11.01.2006. The workman had already completed 240 days within 12 calendar months in each year but on 11.01.2006 during the course of duty the workman was involved in a false case of accident and false FIR was registered against him. Due to registration of FIR, the services of the workman were discontinued on 16.01.2006 without any inquiry, though his juniors were retained in service. The workman faced trial in the criminal case and was acquitted honourably on 22.01.2010 by the Court of JMIC, Panipat. After acquittal by the JMIC Panipat, the workman made several requests to the CTU to take him back on duty but the CTU authorities did not take any step thereto. There were more than 500 workers working under the management of CTU and before terminating the services, the management of CTU did not comply with the provisions of Section 25N and 25F of the ID Act and had not sought mandatory permission from the appropriate authority before terminating his services. Even no departmental inquiry was conducted. The management of CTU also did not comply with provisions of Rule 77 of the Industrial Dispute Rules as the

management of CTU did not frame a seniority list before terminating the services of the workman. The management of CTU also violated the provisions of Section 25G and Section 25H of the ID Act. Failure to get relief from the department, the workman had to file a reference under Section 2A(2) of the ID Act before the Industrial Tribunal & Labour Court, U.T. Chandigarh. The Presiding Officer of the Court disposed off the reference holding that services of the workman were terminated in violation of provisions of Section 25F of the ID Act and against the principles of natural justice. The workman was held entitled to reinstatement with continuity of service and 25% back wages by the Labour Court vide award dated 13.08.2019. The award was implemented vide order No.18392 dated 25.10.2019 by reinstating the workman as Driver No.86A (contractual basis) and was paid the difference of pay drawn and pay due and the pay due including pay band, grade pay and dearness allowance. The pay of the workman was re-fixed vide order dated 13.11.2019 conveyed vide Endorsement No.19267/EAD-1/CTU/2019 dated 18.11.2019. After re-joining the service as Driver in the CTU, the workman continued to work as such till date. The appointment of the workman in the CTU was considered to be contractual irrespective of the fact that the continuity of employment was allowed to be maintained with w.e.f. 11.01.2006 (services of the workman terminated on 11.01.2006) vide award dated 13.08.2019 passed by Industrial Tribunal & Labour Court, U.T. Chandigarh. The workman therefore, continued to be in service of CTU w.e.f. his initial appointment in the year 2013. On finding that the services of the workman continued to be on contract basis, the management of CTU made regular appointments. The workman sought information under the RTI Act, 2005 seeking appointment of Drivers in the department on regular basis. The information has since been supplied to the workman. Perusal thereof indicates that as per order dated 08.07.2019 as many as 38 Drivers were appointed pursuant to an advertisement given in the newspaper / employment news on 02.11.2009 and 15.12.2009 from the General Category, 6 Drivers from EXM General, 26 Drivers from S.C. Category, 3 Drivers from EXM S.C. Category and 2 Drivers from EXM OBC Category. Further appointments were made vide order dated 15.07.2010, 25.11.2010, 04.08.2010, 14.01.2011, 27.05.2014, 03.07.2014, 11.08.2014, 22.06.2017, 07.12.2017 and 29.04.2019. Since the workman has been in continuous service w.e.f. 2003, obviously, he becomes senior to the persons appointed thereafter on the dates referred above. The name of the workman in the year 2003 was sponsored by the Employment Exchange for appointment was Driver and he was selected by the Selection Committee for appointment as Driver in the department because he was fulfilling the requisite qualification for appointment of Driver in the department. Considering the workman to be on contractual basis, till date, is certainly an unfair labour practice within the meaning of ID Act, as further detailed in Schedule V appended to said Act. In view of the above facts, the workman is deemed to be in continuous service w.e.f. 2003 till date and has served continuously for more than 18 years against the vacant post. On 10.04.2006, full Bench of Hon'ble Supreme Court, in case titled as 'Uma Devi', gave direction in para 53 of the judgment that all those employees, who have completed 10 years of service though their initial appointment was irregular are entitled for regularisation of their services against vacant posts, if they fulfill the eligibility for appointment. It was further made clear that eligibility for regularisation to be taken as same as was at the time of initial appointment as daily wagers, ad-hoc, temporary and contractual basis. In pursuance of the abovementioned judgment of Hon'ble Supreme Court, the department issued instructions dated 13.03.2015 in which it has been decided to regularize the services of all those employees, who have completed 10 years continuous service. The Drivers who have completed more than 10 years of service in December 2008, therefore, they are fully eligible for regularisation of their services as per these instructions as well as judgment of Hon'ble Supreme Court passed in Uma Devi's case. The cut-off date of joining on temporary basis have been declared illegal by the Hon'ble High Court in a judgment as reported in 2001 (3) SCT 221 and it has been held that for such regularisation, the requisite numbers of years have to be seen on the date of instructions and cut-off date of initial appointment cannot be imposed being in violation of Article 14 & 16 of the Constitution of India. The workman has completed more than 18 years of service and has become over age for Government service elsewhere. Therefore, the workman is entitled for regularisation of his services. The action of the management in continuing the workman on

contractual basis even after service of 18 years and making regular appointments ignoring the claim of the workman amounts to unfair labour practice because management though selected the workman as per Rules against the vacant posts by regular selection, but treating him contractual / daily wager for years together. The action is also illegal and amounts to unfair labour practice because the Drivers appointed after the selection of the workman have been given regular appointment and are enjoying the regular status but the workman appointed earlier is being treated as appointment on contractual basis. The workman made a several requests to the management to regularize his services but the management has not taken any step in this respect till date. Prayer is made that claim petition may be accepted with the direction to the management to regularize the services of the workman on completion of 10 years of service from his initial appointment w.e.f. December, 2003 and to pay the difference of pay along with 18% per annum from the date, the same were due till its realisation.

4. On notice, the management appeared through its authorized representative Shri Sahil - Clerk and contested the claim of the workers' union by filing written statement on 02.11.2022, wherein preliminary submission are made that the present claim is not maintainable in the present form as the same has been filed without any ground or reasons and the workman has approached this Court with un-clean hands and has also concealed the material facts of the present case. The present claim statement has been filed at highly belated stage. Reliance is made on case titled as *Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol. 75 All India Services Law Journal 22 (SC) and Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by the Hon'ble High Court of Himachal Pradesh*. The workman was duly sponsored by the Employment Exchange and the latter has not been made the party in the present case. The Labour Court, U.T. Chandigarh has disposed off such cases on this ground in a catena of judgments. The workman was appointed as Driver on contractual basis in Chandigarh Transport Undertaking (*here-in-after in short referred 'CTU'*), Chandigarh vide order dated 28.06.2004. The workman has no locus standi and cause of action to file the present claim statement as the terms & conditions of his appointment was very clear that his service shall automatically stand discontinued after expiry of contract period of 89 days without assigning any reason or without giving any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual service. The contractual appointment will not confer any right for regular appointment in CTU, Chandigarh. Similar matter for regularization of service has already been decided through O.A. No.1159/ CH/2004 before the Hon'ble Central Administrative Tribunal (CAT), Chandigarh Bench, which was disposed off vide order dated 24.05.2006 whereby the Hon'ble CAT has duly considered the issue of their regularization and rejected the same on the following observation :-

"We are unable to give directions to the respondents to regularize their services, irrespective of the fact that they have been working with the respondents for more than 7-8 years on contract basis. Thus, keeping in view the legal aspect as above, the prayer of the applicants for their regularization by passing the recruitment rules, has no force and is hereby rejected. However, the respondents are directed to allow these applications to continue as drivers on contract basis against the available vacant post till the regular incumbents are appointed, as directed by this court in its earlier order in O.A. 678/CH/99."

5. The workman filed an OA No.627-CH-2006 before the Hon'ble CAT, Chandigarh to reinstate him in the services, but the same has been dismissed vide judgment dated 24.04.2008. The present statement of claim is not maintainable on the ground of limitation as the services of the workman were dispensed with vide office Endst. No.561/ECD/HOD/CTU/06 dated 16/1/2006. In the letter dated 13.05.2015 regarding Policy/ Scheme regarding regularization of daily wage/work charged employees working in various departments of Chandigarh Administration, it has been clearly mentioned that the Chandigarh Administration has decided

to frame the policy scheme for regularization of the services of work-charged/daily wage employees working in various departments of Chandigarh Administration subject to the fulfillment of the following :-

- (a) In the light of the judgment of the Hon'ble Supreme Court of India in the case of U.T. Chandigarh & Another Versus Sampat& Others. The work- charged/daily wage employees working prior to 1992 shall be given the benefit as per PWD Manual which includes pension also.
- (b) The employees (Group 'C'&'D') shall be regularized to the extent of vacancies in the order of their length of service.
- (c) To create permanent solution for the employees beyond sanctioned strength, Administration Department may move the proposal to Government of India to create posts as decided in para (ii) above.
- (d) The work and conduct of the employee in the service rendered as daily wage/work charged should be satisfactory.
- (e) The medical fitness certificate and police verification should be done at the time of regular appointment.
- (f) This letter will supersede all the previous instructions issued regarding regularization of services of daily wage/work charged employees.

6. It is further stated that the workman is not entitled to the benefits under the letter dated 13.03.2015 as 1992 has been decided as the cut off year but the workman was appointed as Driver in CTU, Chandigarh in the year 2004. The regularly selected candidates have to be appointed as per Rules, as has been observed by the Hon'ble Apex Court in para 1 of the judgment in Uma Devi's Case vide judgment dated 10.04.2006 which is reproduced hereunder :

"1. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our Constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme."

While discussing legitimate expectations of the persons working on contract basis or as casual workers for all number of years, the Hon'ble Apex Court vide judgment dated 10.04.2006 has held as under in para 38 and 43 of the judgment in Uma Devi's Case, which is reproduced hereunder :

"38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the state or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs The Governing Body of the Nalanda College 1961 India SC 358. The case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

7. On merits, it is denied for want of knowledge that the case of the workman was sponsored by the Chandigarh Govt. Transport Workers Union. It is admitted being matter of record that the workman served the demand notice under Section 2(k) of the ID Act for regularize the services of the workman and conciliation proceedings were held thereupon, which were remained unsettled and thereafter the matter was referred to the Industrial Tribunal & Labour Court, U.T. Chandigarh. Further it is being admitted as a matter of record that for appointment of Drivers requisition was sent to Employment Exchange and advertisement was given in Punjabi Tribune and name of the workman was sponsored by the Employment Exchange. It is stated that the workman had applied for the post of bus Driver on the contract basis vide his application dated 31.10.2003 and after following procedure, the workman was appointed as Driver vide his appointment letter No. 5610/ECD /HOD/CTU/2004 dated 25.05.2004 whereby it was clearly mentioned that he was appointed on the consolidated salary of ₹ 6,472/- i.e. minimum a time scale of ₹ 4,020/- D.A. admissible on the date of deployment and it was also clearly mentioned that this consolidated emoluments so fixed would not be increased during the entire period of contract. As per terms and conditions of the contract, the appointment of the workman was only for 6 months or till the regular incumbents, which ever as earlier. Further this contractual appointment of the workman did not confer any right for regular appointment in C.T.U. The service of the workman was liable to be dispensed with at any time without assigning any reason or giving any notice. Further the workman had performed his duty till the date 11.01.2006 but it is quite wrong to allege that he was illegally terminated by the respondent. Rather the service was dispensed with vide order No.561/ECD/HOD/CTU/06 dated 16.01.2006 on the ground of accident which was caused by him on 10.01.2006 with a goods train at an unmanned railway crossing near Bijhol Village, Panipat as reported by the Inspectorate staff of the department and it was duly reported that the workman tried to cross the unmanned railway crossing even after noticing the goods train approaching at that time towards the unmanned crossing. Not only this, but some passengers were also injured in that accident and bus was badly damaged due to rash & negligent driving of the workman. Hence, the workman was not a fit person to be retained in the services in the department that is why the services were dispensed with vide order dated 16.01.2006. The management is a department of Central Government of India and act as a welfare state. The workman was deployed in the management on the contract basis and he was not a regular employee of the department, hence the services of Punjab Civil Service Rules are not applicable in his case that is why the departmental inquiry was not held. The Inspectorate staff examined the case and reported against the workman with regard to his misconduct whereby he had caused the accident of the bus by his rash and negligent driving. The contents with regard to FIR and his criminal trial are denied for want of knowledge as the workman has never conveyed about the fate of criminal case to the management. The workman has never made even the single representation about his alleged acquittal by JMIC, Panipat.

The departmental inquiry was not conducted against workman because he was on the contract and moreover he had not completed his two years in the services and he caused the accident well before culmination of two years of his services. Moreover, the Section 25N & 25F is not applicable as the management is also a department of Government run by the Central Government of India. Further, notice under section 25F was not required in this case because the services of the workman were dispensed with due to misconduct caused by the workman by way of accident with a rash and negligent driving wherein not only the bus was damaged but also some passengers of the bus were injured in this accident. The workman filed an OA No.627-CH-2006 before the Hon'ble CAT, Chandigarh to reinstate him in the services, but the same was dismissed vide judgment dated 24.04.2008. Thereafter, the workman filed an IDR No.5/2017 before the Labour Court, UT, Chandigarh, which was decided in his favour vide Award dated 13.08.2019. The Labour Court, UT, Chandigarh held the workman entitled for reinstatement with continuity of service and 25% back wages. The management was directed to comply with the Award within three months for the date of publication of the same in Government Gazette. The Award of the Court dated 13.08.2019 was implemented by the management vide order dated 18.11.2019 and he was allotted Driver No. 86-A(contractual basis) and his pay was fixed accordingly. Implementation of Award is admitted being matter of record. It is admitted that there have been regular appointments of Drivers in the Department and the regular employees of the management are working with the management because they were appointed on regular basis against the vacant and sanctioned posts through the proper channel. The workman is not a regular employee of the management. He has been appointed purely on the temporary basis and terms & conditions of the contract were reduced in writing which were duly accepted by the workman. Now he cannot claim the regularization in their services by the rule of estoppels as he has accepted the terms and conditions of the contract by putting his signature. Moreover he had ample and sufficient opportunity to participate and appear in the recruitment process of 38 Drivers as has been admitted by him that he was in notice of the advertisement published in the newspaper for the same. The workman has not been performing their duty continuously and he has been working with the management due to compliance of the judgments passed by the Hon'ble Labour Court, U.T. Chandigarh. In the letter dated 13.05.2015 regarding Policy/Scheme regarding regularization of daily wage/work charged employees working in various departments of Chandigarh Administration, it has been clearly mentioned that the Chandigarh Administration has decided to frame the policy scheme for regularization of the services of work-charged/daily wage employees working in various departments of Chandigarh Administration subject to the fulfillment conditions laid down. The workman is not a regular employee of the Management. He has been appointed purely on the temporary basis and terms and the conditions of the contract were reduced in writing which were duly accepted by the workman. Now he cannot claim the regularization in their services by the rule of estoppels as he has accepted the terms and conditions of the contract by putting his signature. The regular employees of the Management are working with the management because they were appointed on regular basis against the vacant and sanctioned posts through the proper channel. As per Office record the workman never filed any representation before the management to regularize his service. Thus present statement of claim is immature and hence deserves to be dismissed. Prayer is made that the claim statement may be dismissed.

8. The workman filed rejoinder, wherein the contents of written statement are denied as wrong except the admitted facts of the claim and the averments of the statement of claim are reiterated.

9. From the pleadings of the parties, following issues were framed vide order dated 05.12.2022 :-

1. Whether the demand raised in the demand notice dated 27.04.2021 by the workers' union are genuine & justified ? If so, to what effect and to what relief the workers' union / workman is entitled to, if any ? OPW
2. Whether the workman has not approached the Court with clean hands and concealed the material facts ? OPM

3. Whether the claim statement is not maintainable in the present form ? OPM

4. Relief.

10. In evidence, the workers' union examined workman Ashwani Kumar as AW1, who tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'W1' to Exhibit 'W4'.

Exhibit 'W1' is authority letter dated 27.04.2021 in favour of Shri J. R. Syal by the President and Secretary of the Chandigarh Govt. Transport Workers' Union (Regd.), U.T. Chandigarh.

Exhibit 'W2' is demand notice dated 27.04.2021.

Exhibit 'W3' is failure report bearing Memo No.442 dated 07.03.2022 of Conciliation Officer, U.T. Chandigarh.

Exhibit 'W4' is order of reference bearing endorsement No.4786 dated 31.03.2022 of Secretary Labour, Chandigarh Administration.

11. On 26.09.2023, the workman closed the evidence in affirmative.

12. On the other hand, the management examined MW1 Amritpal Singh - Junior Assistant, who tendered his affidavit Exhibit 'MW1/A'. The management also examined MW2 Amarjeet Singh - Junior Assistant, who tendered his affidavit Exhibit 'MW2/A' along with copy of offer letter dated 25.05.2004 vide **Exhibit 'M1'**. Learned Law Officer for the management on 01.05.2024 closed the oral evidence and on 29.05.2024 closed the documentary evidence.

13. I have heard the arguments of Learned Representative for the workers' union and Learned Law Officer for the management and have gone through the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

14. Onus to prove this issue is on the worker's union/workman

15. Under this issue workers' union examined workman Ashwani Kumar as AW1, who vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity and supported his oral version with documents Exhibit 'W1' to Exhibit 'W4'.

16. On the other hand management examined MW1 Amrit Pal Singh - Junior Assistant O/o Divisional Manager-cum-Director Transport, U.T, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed all the material contents of written statement which are not reproduced here to avoid repetition. Testimony of MW2 Amarjeet Singh - Junior Assistant vide his Exhibit 'MW2/A' is to the similar effect as deposed by MW1. MW2 supported his oral version with document Exhibit M1'.

17. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly workman Ashwani Kumar was sponsored by the employment exchange and was appointed as bus driver on contract basis by the management vide appointment letter No.5610/ECD/HOD/CTU/2004 dated 25.05.2004/ Exhibit 'M1' on consolidated salary of ₹ 6,472/- i.e. Minimum Time Scale ₹ 4,020/- plus dearness allowance admissible on the date of deployment i.e. 61% of basic. The terms and conditions of appointment letter dated 25.05.2004 / Exhibit 'M1' were as below :-

"1. With reference to your application for the post of bus drivers on contractual basis, you are hereby selected for this post on the consolidated salary of Rs.6472/- (i.e.

Minimum time scale Rs.4020/- plus dearness allowance admissible on the date of deployment i.e. 61% of basic). This consolidated emoluments so fixed will not be increased during entire period of contract.

2. *This contractual deployment is for six months or till regular appointment of drivers, whichever is earlier.*
3. *The contractual appointments will not confer any right for regular appointment in CTU.*
4. *The services of these contractual drivers can be dispensed with at any time without assigning any reason or without giving any notice.*
5. *If you are willing to accept this offer, you are required to report in this office on or before 11.6.2004 for completion of formalities failing which it shall be presumed that you are not interested in accepting offer and the same shall stand cancelled."*

18. Admittedly as per condition No.5 above, the workman accepted the offer and joined the management as Driver. Workman / AW1 in his cross-examination stated that he had joined the management in the year 2004 as Driver. Further the fact remained undisputed between the parties that on the allegation of causing accident of bus by rash & negligent driving, without holding the departmental inquiry on the basis of report of Inspectorate staff, the services of the workman were terminated. The workman / AW1 in his examination-in-chief mentioned the date of termination of his services as 11.01.2006 whereas the management in the written statement pleaded the date of termination of services of the workman as 16.01.2006. MW2 in his cross-examination also mentioned the date of termination of services as 16.01.2006. There is no document on record showing that the actual date of termination of services of the workman. However, there is no specific denial to the fact that for the allegation of causing accident by rash and negligent driving one FIR has lodged against the workman, of which the workman faced trial and acquitted by the Court of JMIC, Panipat (Haryana). Further, there is no dispute with regard to the fact that workman challenged the termination order in IDR No.5/2017 before Industrial Tribunal & Labour Court, U.T. Chandigarh which has allowed in favour of the workman vide Award dated 13.08.2019, whereby the workman was held entitled for reinstatement with continuity of service and 25% back wages with direction to the management to comply with the order within 3 months from the date of publication of Award. Admittedly, the award dated 13.08.2019 was implemented by the management. In this regard management in Para 5(ii) on merits, in the written statement pleaded that the Award of the Learned Court dated 13.08.2019 has been implemented by the management vide order dated 18.11.2019 and he was allotted driver No.86-A (contractual basis) and his pay has fixed accordingly.

19. It is un-denial fact of the parties that in view of the reinstatement in compliance of the Award dated 18.11.2019 of Labour Court, U.T. Chandigarh the workman is in continuous employment of the management on contract basis w.e.f. his initial date of appointment i.e. May, 2004.

20. Learned Representative for the worker's union argued that management of CTU made regular appointments in pursuant to an advertisement given in the newspaper/employment news on 21.11.2009 and 05.12.2009 and selected 38 drivers i.e. 06 drivers from Ex. Serviceman (General Category), 26 drivers from S.C. Category, 03 drivers from Ex. Serviceman (SC Category), 02 drivers from Ex. Serviceman (OBC Category) and the appointments were made vide order dated 15.07.2010, 25.11.2010, 04.08.2010, 14.01.2011, 27.05.2014, 03.07.2014, 11.08.2014, 22.06.2017, 07.12.2017 and 29.04.2019 (number of the appointments as detailed by the workman in claim statement comes to 37 instead of 38) but the services of the workman were not regularised, though workman completed more than 18 years of continuous service on contractual basis against vacant post. Non-regularisation of services of the workman is violation of judgment of Hon'ble Supreme Court in

case titled as *Secretary, State of Karnataka & Others Versus Uma Devi & Others, (2006)4 SCC 1* and also violation of instructions dated 13.03.2015 of Hon'ble Supreme Court in which it has been decided to regularize the services of all those employees who have completed 10 years of continuous service. The workman in the present case has completed more than 10 years of continuous service in the year 2008. Besides, at the time of initial appointment on contract basis the name of workman was sponsored by the employment exchange as driver, and he was duly selected and recommended for appointment as driver against the vacant post by the selection committee vide letter of appointment dated 25.05.2004 / Exhibit M-1. Therefore, the workman is fully eligible for regularization of service.

21. On the other hand, Learned Law Officer argued that admittedly there have been regular appointments of drivers in the department and the regular employees selected on regular posts are working with the management as they are appointed after selection process on regular basis against vacant posts and sanctioned posts through proper channel. Workman's appointment was purely on contract basis. The terms of the appointment letter / Exhibit 'M1' were accepted by the workman at the time of joining in May, 2004 wherein it is made clear that contractual appointment will not confer any rights for regular appointment in CTU. The workman had sufficient opportunities to participate and appear in the recruitment process of 38 drivers as had been admitted by him in his cross-examination wherein workman / AW1 admitted as correct that CTU advertised the posts of drivers on various occasions during the period 2004 to 2019. He had applied in the year 2006 for the regular selection of driver and cleared the driving test and road test. AW1 further stated that he has also appeared in the interview for the selection of driver but not selected.

22. Learned Representative for the workers' union argued that AW1 in his cross-examination voluntarily stated that he was not selected due to pendency of criminal case against him. Learned Representative for workers' union further argued that workman has been acquitted from the criminal case by the court of JMJC, Panipat in the year 2018.

23. Learned Law Officer argued that vide letter dated 13.05.2015, Policy / Scheme was framed regarding regularization of daily wage / work charge employees working in various departments of Chandigarh Administration, subject to fulfillment of following conditions :-

- (a) In the light of the judgment of the Hon'ble Supreme Court of India in the case of U.T. Chandigarh & Another Versus Sampat& Others. The work- charged/daily wage employees working prior to 1992 shall be given the benefit as per PWD Manual which includes pension also.
- (b) The employees (Group 'C'&'D') shall be regularized to the extent of vacancies in the order of their length of service.
- (c) To create permanent solution for the employees beyond sanctioned strength, Administration Department may move the proposal to Government of India to create posts as decided in para (ii) above.
- (d) The work and conduct of the employee in the service rendered as daily wage/work charged should be satisfactory.
- (e) The medical fitness certificate and police verification should be done at the time of regular appointment.
- (f) This letter will supersede all the previous instructions issued regarding regularization of services of daily wage/work charged employees.

24. Learned Law Officer further argued that workman is not entitled to the benefits under the policy/scheme vide letter dated 13.05.2015 as year 1992 has been decided as the cut off year, but the workman was appointed subsequently in the year 2004.

25. To my opinion, before proceeding further with the matter in dispute, it is to be seen whether at the time of initial selection of the workman, the complete selection process required under rules was followed. There is no denial to the fact that at the time of selection on regular basis, the selection process had 2 steps. First dug / driving test and then the candidates who qualified dug / driving test were called for interview. However, there was no written test. It is own case of the workman that no written test was conducted for appointment of workman on contractual basis. In the appointment letter, the selection on contract basis has made only on the basis of interview held on 18.05.2004 for enrollment / engagement on contract basis to the post of bus Driver of the candidates (Sr. No.1 to 38) named in letter No.196 dated 28.06.2004 who have been declared medically fit by the PMO, General Hospital, Sector 16, Chandigarh and the selection vide letter No.196 dated 28.06.2004 had made on purely contact basis for a period of 89 days or till the regular appointment of the candidates belonging to SC/OBC as Bus Driver, whichever is earlier. Name of Ashwani Kumar, workman appear in letter No.196 dated 28.06.2004 at Sr. No.28. Therefore, at the time of initial appointment no driving test was held which is part of the regular selection process.

26. It is own case of the workman that appointment of 38 drivers were made on the basis of advertisement issued in newspaper/employment exchange on 21.11.2009 and 05.12.2009. It is not the case of the workman that he participated in the selection process held on the basis of aforesaid advertisement of year 2009. The case of the workman is that he participated in the selection process in the year 2006. He cleared the driving test but did not qualify interview. The workman has not challenged the selection process held in year 2006.

27. The plea of workers' union that workman is entitled for regularisation is devoid of merits because the workman had opportunity to participate in the selection process in the year 2006 and he did not qualify. The workman again had opportunity to participate in the selection process in the year 2009 but he did not participate in the same. Hon'ble Apex Court in case titled as ***Secretary, State of Karnataka & Others Versus Uma Devi & Others (supra)*** held as below :-

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

.....

52. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this

context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Rai Shivendra Bahadur (Dr.) v. Governing Body of the Nalanda College, AIR 1962 SC 1210. The case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent."

28. In view of the discussion made above, no ground is made out to regularize the service of the workman without qualifying the complete selection process. The plea that workman fulfills the requisite qualification for the post of Driver is devoid of merits because in the initial appointment, complete selection process was not followed.

29. Accordingly, this issue is decided against the workers' union / workman and in favour of the management.

Issues No. 2 & 3 :

30. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

31. Onus to prove both these issues is on the management. During course of arguments both these issues are not pressed by the management.

32. Accordingly, both these issues are decided against the management and in favour of the workers' union / workman.

Relief :

33. In the view of foregoing finding on issue No.1 above, this industrial dispute reference is declined and answered against the workers' union. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 30.05.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th August, 2024

No. 13/2/149-HII(2)-2024/13443.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **36/2021** dated **19.07.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

BALKAR SINGH, H.NO.986, PHASE - I, RAM DARBAR, CHANDIGARH. (Workman)

AND

1. M/S NOVA SECURITY SERVICES PVT. LTD., QUITE OFFICE NO.14, SECTOR 35-A, CHANDIGARH.
2. M/S VTC TRANSPORT PVT. LTD., VILLAGE DARIYA, U.T. CHANDIGARH. (Management)

AWARD

1. Balkar Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the claimant-workman (*here-in-after 'workman'*) was appointed by the respondent-management No.1 (*here-in-after 'management No. 1'*) on 25.03.2019. The workman was deployed at the work place of respondent No.2 (*here-in-after 'management No. 2'*). The workman remained in the uninterrupted employment up to 11.02.2020 when his services were illegally terminated by refusing of work. The workman was drawing ₹ 17,500/-per month as wages at the time of termination. On 12.02.2020, the workman went to attend his normal duty but the workman was refused work by the management No.2 on the advice of management No.1 as alleged by him. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge-sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. The workman lodged a complaint dated 18.03.2020 with the Labour Inspector, U.T, Chandigarh for his re-instatement and other legal dues such as bonus, over-time wages put on by the workman 4 hours daily. The workman was not given any kind of leave. The workman worked on Sundays and other holidays. The management refused to take the workman back on duty before the Labour Inspector, U.T, Chandigarh. For re-instatement, the workman served upon the management a demand notice dated 03.09.2020. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T., Chandigarh was requested for his intervention. The management did not appear before the Conciliation Officer on any date fixed for settlement. The termination is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with continuity of service, full back wages and without any change in his service conditions.

3. On notice, management No.1 contested the claim statement by filing written statement on 20.09.2021 wherein preliminary objections are raised on the ground that the workman concerned was engaged on a fixed term contract to the extent that in case the service contract between the management No.1 and the management No.2 gets terminated before the expiry of the contract period, the services of the workman with the management No.1 would automatically stand terminated. The concerned workman accepted the aforesaid clause by an undertaking - Term of employment dated 24.01.2019 duly signed by him. Since the employment of the workman was for a fixed term, none of the legal rights of the workman have been infringed. As per the settled proposition of law if the termination of service is made under the exceptions exception as contained in Clause (bb) of Section 2(oo) of the ID Act, it would not be a retrenchment and consequently the Section 25F, 25H and 25G would not apply in the present claim statement. Therefore, the present demand notice / statement of claim / reference is not maintainable and the same is thus, liable to be dismissed on this ground alone. The management No.1 is a contractor and the management No.2 is the principal employer. The concerned workman was deployed to work as Security Guard in the establishment of management No.2 on 21.02.2019. The deployment of workman was subject to the requirement of management No.2. For the service rendered by the workman to the management No.2, the management No.2 was to first pay to the management No.1 the wages of the workman, so that, thereafter, the wages were paid to the workman by the management No.1. On 08.02.2020, the management No.2 terminated the contract with the management No.1 verbally w.e.f. 11.02.2020. Despite resistance, management No.1 had to withdraw their Security Guards including the workman from the establishment of management No.2 from 11.02.2020. The management No.1 wrote a letter to the management No.2 on 10.02.2020 asking for one month's wages in lieu of one month's notice as no notice was given for the termination of contract and for removal of Security Guards but the request of management No.1 was declined. In these circumstances, the workman was asked to wait for his fresh deployment as at that point of time due to lockdown no fresh opportunities were available for the deployment of the workman. The workman instead of waiting for his fresh deployment, preferred to file the instant demand notice. Therefore, the demand notice in question under Section 2A of the ID Act as well as the statement of claim are not maintainable. Section 2A pre-supposes that there must be a termination of the services of the workman by his employer and only then a demand notice can be raised under this Section. In the present case, no termination has ever taken place rather the workman was asked to wait for his fresh deployment. Even today if the workman is willing for his fresh deployment through the management No.1, he is welcome. Hence, the demand notice as well as the present statement of claim qua the management No.1 is illegal and deserves to be dismissed on this ground itself.

4. Further on merits, in para-wise reply, it is admitted to the extent that the workman was deployed in the establishment of management No.2 on 21.02.2019 and he was to be withdrawn from there as per the directions and instructions of management No.2. Despite demand the management No.2 did not compensate the workman. As per their record, the monthly rate of wages of the workman was ₹ 16,616.00/- . It is further stated that since all the Security Guards deployed with management No.2 were withdrawn w.e.f. 11.02.2020, the question of attending duty by the workman on 12.02.2020, as alleged, does not arise. The answering management has not violated any provision of the ID Act. A detailed reply was filed to the complaint of the workman before the Labour Inspector. Copy of the complaint enclosed with the written statement may be read as part of the written statement. Management No.2 did not agree to take back workforce of answering management, as such, the workman and others were to be wait for fresh deployment. However, due to COVID-19, no fresh requirement was available. Withdrawal of the workman was beyond the control of answering management. During the period of COVID-19 and lock down imposed from time to time, no fresh requirement has been obtained. In any case, if the workman is interested to be deployed with other clients as a Security Guard through management No.1, he is at liberty to visit office of management No.1 for fresh deployment. Rests of the averments of the claim statement are denied as wrong. Prayer is made that the present reference / statement of claim of the workman may be dismissed with costs.

5. Notice issued to management No.2 for dated 22.07.2021 was received back duly executed through Shri Vikas - Clerk. On 22.07.2021 management No.2 appeared through authorised Representative Shri Gurpreet Singh, who filed memo of appearance and subsequently filed authority letter on 20.09.2021. Thereafter, none appeared on behalf of management No.2 for filing written statement. Vide order dated 25.01.2021 due to non-appearance, management No.2 was proceeded against ex-parte.

6. Workman filed rejoinder wherein the contents of the written statement except admitted facts are denied as wrong and averments of claim statement are reiterated.

7. From the pleadings of parties, following issues were framed vide order dated 16.03.2022 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and what relief he is entitled to, if any? OPW

2. Relief

8. In evidence, workman Balkar Singh examined himself as AW1 and tendered his affidavit / Exhibit 'AW1/A'. On 27.02.2024, Learned Representative for the workman closed his evidence in affirmative.

9. On the other hand, management No.1 examined MW1 Brig. Inderjeet Singh Gakhal, Executive Director, M/s Nova Security Services Pvt. Ltd. who tendered his affidavit / Exhibit 'MW1/A' along with copies of documents Exhibit 'M3' to Exhibit 'M5'. It is pertinent to mention here that the documents Exhibit 'M1' and Exhibit 'M2' were put by the management to the AW1 / workman during cross-examination.

Exhibit 'M1' is copy of undertaking - term of employment dated 24.01.2019.

Exhibit 'M2' is copy of reply dated 10.08.2020 filed by Nova Security Service (P) Ltd. through its authorised Signatory to the Labour Inspector, U.T. Chandigarh in the matter of complaint dated 18.03.2020 of Balkar Singh.

Exhibit 'M3' is copy of letter No.Nsspl/VTC/P01/2020 dated 10th February, 2020 issued from Authorised Signatory of Nova Security Services to Vtc Transport Pvt. Ltd., Village Dariya, Chandigarh on the subject termination of contract without prior notice.

Exhibit 'M4' is copy of postal receipt dated 11.02.2020.

Exhibit 'M5' is copy of letter dated 17.02.2020 addressed from Shri Pradeep Kumar Bhartiya, Vtc Transport Pvt. Ltd. to Nova Security Service Pvt. Ltd. on the subject "*Termination of the Security personal from our various yard*".

10. On 07.05.2024, Learned Representative for management No.1 closed oral evidence of the management No.1. On 15.07.2024, Learned Representative for management No.2 closed documentary evidence of management No.1.

11. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

12. Onus to prove this issue is on the workman.

13. Under this issue the workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity.

14. On the other hand, the management No.1 examined MW1 Brig. I. S. Gakhal - Executive Director, who tendered his affidavit Exhibit 'MW1/A'. (MW1 has used the interchangeable term respondent-management or respondent No.1 for management No.1 during his testimony which hereinafter referred as 'management No.1'). MW1 in his affidavit Exhibit 'MW1/A' deposed that he is conversant with the facts of the present case. The workman concerned was engaged on a fixed term contract of employment for which an undertaking - term of employment was duly signed and accepted by the workman on 24.01.2019 and thereafter, he was deployed as a Security Guard in the establishment of respondent No.2 i.e. M/s Vtc Transport Private Limited. As per Clause No.2 of the undertaking, the services of the workman were to be automatically terminated in case the contract between the respondent-management and its client company get terminated. The contract of service between management No.1 and management No.2 was terminated verbally by management No.2 with effect from 11.02.2020 for which the management had to send a registered letter on 10.02.2020 vide postal receipt dated 11.02.2020. This letter of the management was acknowledged by M/s Vtc Transport Private Limited vide letter dated 17.02.2020. He further deposed that since the contract between management No.1 and management No.2 got terminated with effect from 11.02.2020, the services of the workman came to an end on 11.02.2020 so the management had to withdraw its Security Guards from the establishment of management No.2. Thereafter, the services of the workman were not utilized due to spread of COVID-19. He further deposed that the management in para 7 of written statement advised the workman to visit its office for fresh deployment, if he so desired but the workman did not visit the office of the management for further deployment. In preliminary objection No.2, at page 3 of the written statement, it is also clearly mentioned that even today, if the workman is willing for his fresh deployment through the answering management, he is welcome but the workman did not respond. He further deposed that the workman was engaged on fixed term contract and, as such, none of his legal rights have been infringed. His termination falls in the exception as contained in Clause (bb) of Section 2(oo) of the ID Act. Section 25F, 25H & 25G are not attracted in the present case. The workman has been in gainful employment immediately after his termination. The workman is not entitled to any relief whatsoever. To support the oral version of MW1, Learned Representative for management No.1 referred documents Exhibit 'M1' to Exhibit 'M5'.

15. From the oral as well as documentary evidence led by the parties, it is made out that the workman was appointed by management No.1 w.e.f. 24.01.2019 as Security Guard to be deployed at M/s Bhawan Vidyalay or any other client. At the time of joining service with management No.1, the workman has signed undertaking - term of employment on dated 24.01.2019. The management No.1 has taken the plea that the Security Guards including the workman deputed with the establishment of Vtc Transport Pvt. Ltd. were withdrawn on receipt of telephonic message on dated 08.02.2020 from Vtc Transport Pvt. Ltd. to remove their Guards w.e.f. 11.02.2020. The aforesaid plea taken by the management No.1 stands proved from the correspondence between the management No.1 & 2 vide letters Exhibit 'M3' and Exhibit 'M5'. From the contents of letters Exhibit 'M3' and Exhibit 'M5' it is duly established that the management No.1 removed the Security Guards from the establishment of management No.2 w.e.f. 11.02.2020 on account of termination of contract with management No.1 before the expiry of the contract period by the management No.2. In such circumstances, term / stipulation / clause No.2 of undertaking dated 24.01.2019 / Exhibit 'M1' is applicable. Management No.2 did not bother to contest the claim statement despite appearance through authorised representative and preferred to be proceeded against ex-parte. In this regard, the workman / AW1 Balkar Singh in his cross-examination stated that he has seen the original undertaking dated 24.01.2019 which is written in English as well as in Hindi language. AW1 further stated that copy of undertaking dated 24.01.2019 is Exhibit 'M1'. AW1 further stated that he identifies the signatures at point-A of undertaking written in English language and point-B of undertaking written in Hindi language. It is pertinent to mention here that at the time of recording cross-examination of AW1, original undertaking dated 24.01.2019 was produced

which was seen and returned. From the aforesaid version of AW1 it is duly proved that the workman has signed undertaking dated 24.01.2019 / Exhibit 'M1' after accepting the terms of employment contained therein. The perusal of Exhibit 'M1' would reveal that it contains the terms / stipulations from Sr. No.1 to 18. The relevant term / stipulation / clause No.2 is reproduced as below :-

"2. That in case the service contract between the management and the client company gets terminated before the expiry of contract period, my service with NSPPL would automatically stand terminated"

16. The workman / AW1 when put to cross-examination by management No.1 admitted as correct that it is incorporated in Clause 2 of Exhibit 'M1' that in case the service contract between the management and the client company gets terminated before the expiry of contract period, his service with NSPPL would automatically stand terminated. AW1 further admitted as correct that Nova Security services (P) Ltd. is in short known as NSPPL. AW1 further admitted as correct that he was deployed at M/s Vtc Transport Pvt. Ltd. i.e. management No.2. AW1 admitted as correct that the contract between NSPPL and M/s Vtc Transport Pvt. Ltd. was terminated w.e.f. 11.02.2020. AW1 further admitted as correct that after termination of contract NSPPL / management No.1 withdrawn the Security Guards including himself from the establishment of management No.2. The aforesaid version of AW1 would support the plea of management No.1 that withdrawal of the workman from the establishment of management No.2 was in accordance with the term / stipulation / clause 2 contained in undertaking dated 24.01.2019 / Exhibit 'M1' and therefore, the withdrawal of the workman from the establishment of management No.2 does not amount to retrenchment as defined in Section 2(oo) of the ID Act and the same falls in exception clause (bb) of Section 2(oo) of the ID Act.

17. The argument advanced by Learned Representative for the workman that before termination of services of the workman, compliance of Section 25F of the ID Act is not made, is devoid of merits because, as discussed above, the withdrawal of workman from the establishment of management No.2 in accordance with terms / stipulation / clause No.2 of Exhibit 'M1', is covered under Clause (bb) of Section 2(oo) of the ID Act, to which the provision of Section 25F of the ID Act does not apply.

18. Furthermore, the argument advanced by Learned Representative for the management that after withdrawal of the workman from the establishment of management No.2, his immediate further deployment to any other organisation could not be made due to spread of COVID-19 and lock-down, could not be controverted by the Learned Representative for the workman. The workman / AW1 in his cross-examination admitted as correct that immediately after termination of the contract, COVID-19 spread. AW1 further admitted as correct that from the last week of March, 2020 up to April, 2020, there was complete lock-down due to COVID-19.

19. The management in the written statement as well at the stage of evidence of workman and at the stage of evidence of management has offered to workman his fresh deployment with some other establishment and the offer was not accepted by the workman. In this regard workman / AW1 when put to cross-examination by management No.1 stated that he does not know if the management in the written statement filed in this case has offered that in case he is interested to be deployed with other clients of management No.1 as a Security Guard, he is at liberty to visit their office for fresh deployment. AW1 has not specifically denied the offer of fresh deployment given by management No.1 in the written statement. Under the law, the fact which is not specifically denied is deemed to be admitted. Moreover, the management No.1 in para 7 on merits / para-wise reply has pleaded as below :-

"7. That the prayer clause as made by the workman in Para 7 of the Statement of Claim is untenable and it cannot be accepted. During the period of COVID-19 and lockdown imposed from time to time, no fresh requirement has been obtained. In any case, if the

workman is interested to be deployed with our other client as a Security Guard through us, he is at liberty to visit our office for fresh deployment at the earliest."

20. AW1 in his cross-examination further stated that he is not ready to join with management No.1, if the management No.1 offers him today for deployment afresh. The aforesaid version of AW1 would support the plea of management No.1 that workman has rejected the offer of fresh deployment given by the management from time to time.

21. In the claim statement, the workman has specifically pleaded in para 7 that he remained unemployed during the period i.e. from the date of termination to till date. The aforesaid plea taken by the workman in his claim statement stands falsified from his cross-examination. AW1 in his cross-examination stated that in the year 2020, he started doing work of housekeeping with Curlfit Gym, Chandigarh, there he was getting monthly salary in the sum of ₹10,000/- through Random Access Growth Ventures Pvt. Ltd. He remained working with Curlfit Gym for about 2 years. Thereafter, he started working as Office Boy with BHEL (Bharat Electronics), Panchkula, there he was getting monthly salary in the sum of ₹15,300/. AW1 further stated that he is working with BHEL till date. AW1 further stated that at the time of filing of the claim application he was doing job. The aforesaid version of AW1 would lead to the inference that the workman has concealed the material facts and wrongly pleaded that he remained unemployed from the date of termination to till date.

22. In view of the reasons recorded above, the withdrawal of the workman from the organisation of management No.2 being in accordance with term / stipulation / clause 2 of the undertaking dated 24.01.2019 / Exhibit 'M1' does not amount to termination or retrenchment rather the same is covered under clause (bb) of Section 2(oo) of the ID Act. The judgment of Hon'ble Supreme Court referred by Learned Representative for the management No.1, reported in **2013 AIR (SC) 2762** titled as **Bhavnagar Municipal Corporation Versus Salimbhai Umarbhai Mansuri** is applicable to the facts of the present case to an extent.

23. Accordingly, this issue is decided against the workman and in favour of the management No.1.

Relief :

24. In the view of foregoing finding on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .

Dated : 19.07.2024.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Lakhi, D/o Sh. Bhag Singh, R/o H. No. 305, Sector 33, Chandigarh, have changed my name from Lakhi to Lakhvinder kaur.

[1286-1]

I, Dapinder Singh, S/o Balwinder Singh, R/o # 2544, Sector 44-C, Chandigarh, have changed the name of my minor son from Tajasbeer Singh to Tejasveer Singh.

[1287-1]

I, Raj Kumar Soni, S/o Sh. Kanchan Lal Soni, R/o # 2730, Vikas Nagar, Mauli Jagran, Chandigarh, have changed my minor daughter's name Anshika to Anshika Soni.

[1288-1]

I, Raj Kumar Soni, S/o Sh. Kanchan Lal Soni, R/o # 2730, Vikas Nagar, Mauli Jagran, Chandigarh, have changed my minor son's name Ayush to Ayush Soni.

[1289-1]

I, Inderjit Kaur *alias* Inderjit Kaur Basran *alias* Gurmeet Kaur, W/o Jaswant Singh, # 1140, Sector 34-C, Chandigarh, have changed my name to Gurmeet Kaur.

[1290-1]

I, Roli, W/o Asharfi Lal, # 215, Sector 9-C, Chandigarh, have changed my name to Sudama.

[1291-1]

I, Ravinder, S/o Rikhi Ram Guleria, R/o 2193/31, PWT Manimajra, Chandigarh, have changed my name to Ravinder Singh Guleria.

[1292-1]

I, Lalji, S/o Sh. Bhag Singh, R/o H. No. 305, Sector 33, Chandigarh, have changed my name from Lalji to Gurpreet Singh.

[1293-1]

I, Luxmi Prabhakar, D/o Sh. Shadi Lal Sharma, W/o Ravi Prabhakar, R/o 2293, Sector 37-C, Chandigarh, have changed my name from Luxmi Sharma to Luxmi Prabhakar.

[1294-1]

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